MUZAMMIL IZAT HASHIM

v.

PP

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL APPLICATION NO: NO 44-23-2003]
30 JULY 2003

CRIMINAL PROCEDURE: *Revision - Production of documents - Application for production of documents refused - Whether a final order - Whether could be subject to revision - Proper remedy - Whether to appeal against order - Criminal Procedure Code ss. 51, 162, 163, 164, 307(1)*

The accused, who was charged with rape, applied to the learned Sessions Court Judge to be furnished with particulars of the witnesses and their respective statements, as well as the sketch plan and the photographs of the scene. The application was refused and the accused applied to the High Court to exercise its revisionary jurisdiction to grant the order sought for. The prosecution objected. The issue was whether revision constituted a proper remedy for the accused, and if not, whether, rightly, he ought to have appealed against the said decision of the Sessions Court.

Held (dismissing the application):

[1] What the defence in a criminal trial is entitled to and what is the duty of the prosecution to provide are to be found in ss. 162, 163 and 164 of the Criminal Procedure Code (CPC). They do not say that an accused person is entitled to know the means by which the prosecution proposes to prove the facts alleged in the charge. The only provision of law that deals with the application of the nature made in this case is s. 51 of the the CPC. The said s. 51 however does not allow an accused to ask for discovery or inspection of documents seized by the police in the course of their investigation. (pp 401 e-f & 402 c)

[2] The order as made by the Sessions Court is final in its effect and therefore appealable under s. 307(1) of the CPC. In the event, the proper remedy for the accused would have been to appeal against the order made. The High Court will not exercise its revisionary jurisdiction when a decision complained of is appealable but no appeal has been lodged. (p 402 d-f)

Case(s) referred to:
Dorai Manickam v. R [1936] MLJ 261 ***(refd)***
Hj Abdul Ghani Ishak v. PP [1980] 2 MLJ 196 ***(refd)***
PP v. Raymond Chia Kim Chwee & Anor [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC ***(refd)***
PP v. Teoh Choon Teck [1963] MLJ 34 ***(refd)***
Syed Abu Bakar Ahmad v. PP [1982] 2 MLJ 186 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 51, 162, 163, 164, 307(1)

For the applicant - Charles Hector (Roland Engan); M/s Hector & Co
For the respondent - Stanley Clement Augustin DPP

Reported by Rusnah Aziz

JUDGMENT

Augustine Paul J:
On 25 January 2002 the accused was charged with an offence of rape in the Sessions Court at Kuala Lumpur where he made an oral application to be supplied with particulars of the witnesses and their statements to the police and the sketch plan and photographs taken at the scene. The application was dismissed. Then on 22 November 2002 he made a written application to the Sessions Court asking for the following:

(a) Bahawa sidituduh dibekalkan dengan salinan kesemua pernyataan-pernyataan bertulis yang dibuat oleh saspek-saspek lain, saksi-saksi, pengadu dan mana-mana orang lain berkenaan kes ini yang telah dibuat semasa penyiasatan mengenai kes ini dan/atau yang berkenaan dengan kes ini;

(b) Bahawa sidituduh dibekalkan dengan Rajah Kasar serta kunci Rajah Kasar, Lakaran atau Peta dan Gambar Foto yang diambil berkenaan tempat kejadian di mana hal perkara yang dinyatakan dalam kertas pertuduhan telah berlaku;

(c) Bahawa sidituduh dibekalkan dengan nama kesemua saspek-saspek lain, saksi-saksi, pengadu dan mana-mana orang lain berkenaan kes ini;

(d) Bahawa sidituduh dibekalkan apa-apa dokumen, lapuran, lapuran perubatan, lapuran polis, lapuran kimia, lapuran DNA serta senarai maklumat bahan-bahan yang berkenaan dengan kes dan pertuduhan terhadap sidituduh;

(e) Bahawa sidituduh dibekalkan dengan maklumat mengenai kawat cam serta nama mereka yang mengambl bahagian dalam kawat cam termasuk nama-nama saspek lain yang dihadapkan di hadapan kawat cam;

(f) Bahawa sidituduh dibekalkan dengan lapuran polis yang menyatakan gari telah digunakan dalam insiden halperkara pertuduhan ATAU secara alternatif mendapat pengesahan bahawa lapuran sedemikian tidak pernah wujud;

(g) Perintah bahawa kesemua yang diminta dalam permohonan ini dibekalkan kepada sidituduh dalam masa sepuluh (10) hari daripada tarikh perintah;

(h) Lain-lain perintah yang Mahkamah Yang Mulia fikirkan adil dan wajar.

The application was fixed for hearing on 28 February 2003. The date was then brought forward to 17 February 2003. A request for adjournment by counsel was rejected by the Sessions Court and the application was withdrawn. The accused then refiled a similar application. It was fixed for hearing on 19 March 2003. On that day the application was dismissed by the Sessions Court on the ground that the matter has already been adjudicated upon when the oral application was dismissed. On 23 April 2003 the accused filed a notice of motion in the High Court praying for a similar order in the exercise of its revisionary powers.

The applications made in the High Court and in the Sessions Court are for the production of documents considered to be necessary for the trial that the accused is facing. What the defence in a criminal trial is entitled to and what it is the duty of the prosecution to provide are to be found in ss. 162, 163 and 164 of the Criminal Procedure Code. They do not say that an accused person is entitled to know the means by which the prosecution proposes to prove the facts alleged in the charge (see *PP v. Teoh Choon Teck* [1963] MLJ 34). The only provision of law that deals with an application of the nature made in this case is s. 51 of the Criminal Procedure Code ("s. 51") which reads as follows:

(1) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before that Court or officer, such Court may issue a summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce any property or document shall be deemed to have complied with the requisition if he causes the property or document to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the provisions of any law relating to evidence for the time being in force or to apply to any postal article, telegram or other document in the custody of the postal or telegraph authorities.

Section 51 enables accused persons to apply for the production of documents (see *PP v. Teoh Choon Teck* [1963] MLJ 34; *Hj Abdul Ghani Ishak v. PP* [1980] 2 MLJ 196). It merely gives the applicant the right of inspection and he has to make copies of the documents himself (see *Hj Abdul Ghani Ishak v. PP* [1980] 2 MLJ 196). In *Syed Abu Bakar Ahmad v. PP* [1982] 2 MLJ 186 it was held that s. 51 does not allow an accused to ask for discovery of documents or inspection of documents seized by the police in the course of their investigation since to do so would be tantamount to inspection of the evidence of the prosecution by the defence prior to the trial. In *PP v. Raymond Chia Kim Chwee & Anor* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC it was held that in exercising the discretion under s. 51 the court will have to consider the justice of the case and the stage of the proceedings the application is made. The court to which applications of this nature must be addressed is the court before which the trial is pending or in which the trial is proceeding. It was further held that any order made is final in its effect and is therefore appealable under s. 307(1) of the Criminal Procedure Code. It is a general rule that the High Court should not exercise its revisionary jurisdiction when a decision complained of is appealable and no appeal has been lodged (see *Dorai Manickam v. R* [1936] MLJ 261).

It would appear that the oral application made by the accused in the Sessions court is in substance one under s. 51 though in form it was not. Perhaps it was dismissed as the prescribed procedure was not followed. The proper remedy that the accused ought to have pursued would have been to have appealed against the order made. He did not do that. The application before me is therefore wrong in law. No arguments were addressed to me as to why I should exercise my powers of revision in the circumstances of the case. Accordingly, I dismissed the application.